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**The Commonwealth of Massachusetts
Department of Education**

350 Main Street, Malden, Massachusetts 02148-5023

Telephone: (617) 388-3300
TTY: N.E.T. Relay 1-800-439-2370



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MEMORANDUM

TO: Superintendents and Chapter 622 Coordinators
FROM: Robert V. Antonucci, Commissioner of Education *RVA*
DATE: November 30, 1993
SUBJECT: Guidelines to School Districts on Addressing Sexual Harassment

The Department of Education is committed to assisting school districts to create safe and secure schools in which all students are respected and expected to learn. Prevention of sexual harassment is one important aspect of creating safe schools.

To this end, please find attached the Department's *Guidelines To School Districts On Addressing Sexual Harassment*. The purpose of this document is to provide assistance to districts and schools through recommending policies and practices that, if implemented, will help prevent sexual harassment.

Please call Anne Marie McDonald at (617) 388-3300 X284 if you have any questions.

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November, 1993

GUIDELINES TO SCHOOL DISTRICTS ON ADDRESSING SEXUAL HARASSMENT

BACKGROUND

Recently, school districts have focused increased attention on ensuring the safety and security of all students in public schools. Preventing school violence and harassment is of paramount concern, as is creating a school climate that is supportive, respectful of all school community members, and conducive to serious learning.

Sexual harassment is an increasing problem for many schools. Recent national surveys by Seventeen Magazine and the American Association of University Women Educational Foundation have found that sexual harassment is still pervasive in our public schools, with 80% of girls reporting having been sexually harassed in some manner in school.

In February 1992 the U.S. Supreme Court ruled in *Franklin v. Gwinnett County (Ga.) School District* case that, under Title IX of the Education Amendments of 1972, victims of sexual harassment and other forms of sex discrimination in schools may sue their school districts for monetary damages. In this case, a female student alleged she repeatedly reported to school officials that a male teacher was sexually harassing her, and that school officials did nothing to stop the harassment and attempted to convince her not to file a complaint with the U.S. Department of Education's Office for Civil Rights. The Franklin decision is leading many school districts to seek assistance in developing sexual harassment policies.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination. Under the Massachusetts law on fair educational practices (Chapter 151C of the Mass. General Laws), the term "sexual harassment" is defined as follows:

any sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when: (i) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.
Massachusetts General Laws c. 151C, s. 1(e).

Under the federal Title IX regulations, the U.S. Office for Civil Rights defines "sexual harassment" as "verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or student, which is unwelcome, hostile, or intimidating." Letter to McCoy from OCR Region V, April 27, 1993, citing 34 CFR s. 106.31(b)(1) through (4) and (7).

Sexual harassment can cover a range of behaviors, including sexual insults and name-calling, off color jokes, intimidation by words or actions, offensive touching, and pressure for sexual activity. Harassment may be perpetrated by peers, school staff, or others with whom the victim must interact in order to fulfill school or job duties. In schools, sexual harassment may be student to student, staff to student, student to staff, or staff to staff. While both females and males may be the targets of sexual harassment, in the majority of cases the target is female and the harasser is male.

It is important to remember that sexual harassment, or the existence of a sexually hostile environment (which is created by acts of a sexual nature that are sufficiently severe or pervasive to impair the educational or employment benefits provided by the school) is determined from the viewpoint of a reasonable person in the victim's situation. When an individual complains about sexual harassment or a sexually hostile environment, school officials must assess all the facts and circumstances from that viewpoint.

LAWS REGARDING SEXUAL HARASSMENT

Sexual harassment in public schools is sex discrimination, and therefore is prohibited by federal and state laws. Title IX of the federal Education Amendments of 1972 (20 U.S.C. 1681) states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." In addition, Mass. General Laws Chapter 151C, section 2(g) states that "it shall be an unfair educational practice for an educational institution to sexually harass students in any program or course of study."

If the alleged sexual harassment constitutes sexual abuse of a child by a "caretaker" (e.g., by a school staff member), then school administrators, teachers, and other school staff who are mandated reporters are required by Mass. General Laws Chapter 119, section 51A to report the suspected child abuse to the Department of Social Services.

Massachusetts General Laws Chapter 76, section 5 (commonly known as "Chapter 622") and the Chapter 622 Regulations (603 CMR 26.00) contain provisions designed to "insure the right of access to the public schools of the Commonwealth and the equal enjoyment of the opportunities, advantages, privileges and courses of study at such schools without regard to race, color, sex, religion or national origin." The provisions include requirements that every school district:

- Establish policies and procedures that support and promote equal access for all persons regardless of race, sex, color, national origin, religion or limited English-speaking ability;
- Annually evaluate all aspects of the PK-12 school program to insure equal opportunities for all students;
- Appoint a Title IX/Chapter 622 Coordinator to publicize the anti-discrimination requirements and handle complaints; and
- Provide information and training to staff on issues of equal opportunity.

The federal Title IX regulations also require school districts to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints. All of these laws support the right of students to attend school in a safe, secure, and supportive environment that is conducive to serious learning.

EFFECTS OF SEXUAL HARASSMENT

In school, sexual harassment can affect a student's academic progress, self-esteem, extra-curricular involvement, and social relationships. Sexual harassment in schools that is allowed to occur unchecked can also create a school climate detrimental to learning for all students. In these schools, students may not feel safe, they may not feel free to fully participate in classes and school activities, and they may not feel valued as members of the school community. Such a climate can lead to more serious offenses.

RECOMMENDATIONS FOR SCHOOLS

To promote a safe school environment that is free of sexual harassment, in addition to the requirements of Title IX/Chapter 622, the Department of Education offers the following recommendations to school districts:

Develop School Policies

- **Develop a clear written policy that sexual harassment will not be tolerated, and that includes clear guidelines for addressing alleged incidents of sexual harassment.** This policy should address student-student, staff-student, staff-staff, and student-staff sexual harassment, and be distributed annually. The guidelines for addressing sexual harassment incidents should include, but not be limited to:

- defining sexual harassment;
- identifying the behaviors and attitudes that constitute sexual harassment;
- outlining clear grievance procedures that provide for prompt and equitable resolution of complaints;
- maintaining privacy rights; and
- outlining the consequences for those who sexually harass others, including both disciplinary actions and counseling services.

One approach schools have used in certain cases, rather than relying solely on disciplinary procedures, is to establish a process in which staff assist the victim to communicate directly to the alleged perpetrator, by means of a letter which a staff person delivers, the negative impact of the behavior and the need to stop the behavior. Minuteman Vocational Technical School is one example of a school with this type of policy.

If the school's sexual harassment policy is part of a broader policy on harassment of all types, it will serve to communicate a consistent message about creating a safe and positive school climate.

Encourage Students to Report Incidents of Harassment

- **Ensure that there is at least one individual in each school to whom students and staff can express concerns about harassment.** Students should be made aware of these individuals and their role. It is often helpful if at least two are designated; one male and one female. Students should also be made aware of the Title IX/Chapter 622 Coordinator for the district and his/her role responsibilities.
- **Respond immediately to every report of sexual harassment with attention and support.** Any student who comes forward with a concern about how she or he is being treated by another individual should be met with attention and support. Approach each complaint or concern with a nonjudgmental attitude, remembering that the sexual harassment must be determined from the viewpoint of a reasonable person in the victim's situation. It is essential to follow through every concern to an appropriate resolution. Concerns that are met with disbelief, blame, or lack of attention may encourage further incidents of sexual harassment, damage reputations, and expose the school to legal liability. The longer the delay in handling reports of sexual harassment, the more complicated sexual harassment problems become. In responding to and resolving complaints, schools should:
 - Ensure the confidentiality of the alleged victims and offenders by involving as few people as possible in the resolution of the problem;
 - Focus on changing behavior rather than simply punishing the offender; and
 - Protect the complainant from retaliation.

Provide Training to Staff and Students on Sexual Harassment

- **Provide annual training to staff on understanding sexual harassment and how to address it when it occurs in school.** This should include opportunities for staff to deal with real school incidents that they have heard about, observed, or participated in, and discuss and roleplay how they would address them in a positive way. All staff should be familiar with the district/school policy and guidelines on sexual harassment, and the staff members designated to handle sexual harassment incidents.
- **Provide annual opportunities for all students to receive training in how to recognize and respond to sexual harassment.** This can be accomplished through peer education programs, special seminars, or integrating sexual harassment as a topic within a health education or social studies class. Sex role stereotypes, societal expectations of males and females, defining sexual harassment, and exploring how to prevent and respond to sexual harassment are all appropriate topics for discussion. In-depth units or seminars are more effective than one-time presentations.

Foster a School Climate Free of Harassment

- **Initiate a task force to examine the school environment.** Subtle forms of sex discrimination and gender bias can often be unintentional messages to students that sexual harassment is a permissible behavior. This includes curriculum materials or displays that indicate sexual bias, sexually harassing graffiti on the walls, or underenrollment of females in certain courses. A task force of staff, students, and parents can examine all aspects of the school environment and develop recommendations on promoting a positive, safe, bias-free, and harassment-free climate.
- **Create a positive school climate of respect and decency.** Strong core values of respect and decency, that are developed by the school community and widely publicized, communicate clear expectations of the types of behavior and attitudes that are accepted and valued within the school.
- **Model valued behaviors, attitudes, and beliefs.** Staff are important role models for students, and students are careful observers of staff behavior and attitudes. Thus, how staff interact with each other and with students can deliver a strong message of what is acceptable behavior in school. Staff need to model behaviors and attitudes of decency and respect.
- **Assist students in understanding the impact of their behaviors.** Any seemingly casual joke that is sexually harassing in nature can have a lasting impact if it goes unchallenged. It is important that staff intervene whenever they witness acts of harassment. While communicating that the behavior is unacceptable, it is also important to engage students in discussion about the impact of behaviors and attitudes.

RESOURCES FROM THE MASSACHUSETTS DEPARTMENT OF EDUCATION

The following resources are available from the Massachusetts Department of Education to assist districts and schools in addressing the topic of sexual harassment:

- Technical assistance in developing sexual harassment policies and guidelines (call Anne Marie McDonald at (617) 388-3300 X284);
- Referrals to experienced trainers in the field, and limited training provided by Department staff (call Anne Marie McDonald at (617) 388-3300 X284);
- Examples of other districts' sexual harassment policies and guidelines (call Anne Marie McDonald at (617) 388-3300 X284);
- *No Laughing Matter: High School Students and Sexual Harassment* (1982, Massachusetts Department of Education), a 25-minute videotape. (Call Joe Goldsberry at (617) 388-3300 X550);
- *Who's Hurt and Who's Liable: Sexual Harassment in Massachusetts Schools: A Curriculum and Guide for School Personnel* (Massachusetts Department of Education). A revised curriculum guide will be available by January, 1994. (Call Maureen Holliday at (617) 388-3300 X240.)

OTHER RESOURCES

- *Sexual Harassment in Schools: A Policy Guide* (1993). Available for \$7.00 from National Association of State Boards of Education, 1012 Cameron St., Alexandria, VA 22314, (703) 684-4000.
- *It's Not Fun - It's Illegal: The Identification and Prevention of Sexual Harassment to Teenagers*, a curriculum. \$10.00. (1988). Available from the Minnesota Department of Education, 522 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101, (612) 297-2792.
- *Tune In Your Rights: A Guide for Teenagers About Turning Off Sexual Harassment*. \$3.00. Available from PEO, 1005 School of Education, University of Michigan, Ann Arbor, MI 48109-1259, (313) 763-9910.
- *Sexual Harassment and Teens*, a manual. \$17.95 (1992). Available from Free Spirit Publishing Inc., 400 First Avenue, North, Suite 616, Minneapolis, MN 55401, (612) 338-2608.

- *Preventing Teen Dating Violence - Three Session Curriculum for Teaching Adolescents*, and *Peer Leader Training Manual*. Both by Carol Sousa, Lundy Bancroft and Ted German. Published by Dating Violence Instruction Project. \$15.00 and \$10.00. Available from Transition House, P.O. Box 530, Harvard Square Station, Cambridge, MA 02238.
- *Secrets in Public: Sexual Harassment in Our Schools*, by Nan Stein, Nancy L. Marshall, and Linda R. Tropp. A report on the results of a Seventeen Magazine survey. \$11.00. Available from Publications Department, Center for Research on Women, Wellesley College, Wellesley, MA 02181-8259, (617) 283-2510.
- *Sexual Harassment in Schools*, a videotape produced by National Education Association and The Learning Channel. \$15.95. Available from NEA Professional Library, Box 509, West Haven, CT 06515, (800) 229-4200.
- *Title IV Desegregation Assistance Center*, 144 Wayland Avenue, Brown University, Providence, RI 02906-4384, (401) 274-9548.